HIGH COURT OF UTTARANCHAL AT NAINITAL

(Court's order whether the case is or not approved for reporting)

(Chapter VIII Rule 32 (2)(b)

Description of the case.

W.P. No. 7049 (S/S)/2001

Smt. Chitra Dheer W/o Sri Vimal Kumar Dheer

Versus

State of Uttaranchal through its
Secretary, Civil Secretariat
Dehradun and others.

Approved for reporting.

_____

~~Not approved for reporting~~

Date of decision. 19.12.2003

Initial of Judge

HIGH COURT OF UTTARANCHAL AT NAINITAL.

Writ Petition No. 7049 (S/S) 2001

Smt. Chitra Dheer W/o Sri Vimal Kumar Dheer,
R/o House No. 414 New Avas Vikash Colony Gadarpur,
District Udham Singh Nagar. …. Petitioner.

Vs.

1. State of Uttaranchal through its Secretary,
   Civil Secretariat, Dehradun,
2. Director Social Welfare Department, Uttaranchal
   Lucknow,
3. District Social Welfare Officer, U.S. Nagar,
4. Principal Rajkeeya Ashram Padhyati,
   Ucchater Madhyamic Vidhyalay Gadarpur,
   U.S. Nagar,
5. State of U.P. through its'
   Appointment Secretary, Civil Secretariat, Lucknow.,
6. Director Jan Jati Vikash Vibhag,,
   Uttar Pradesh, Lucknow. …. Respondents

Sri. Ashish K. Joshi, learned counsel for the petitioner,
Learned Standing Counsel for the respondent.

Dated 19.12.2003:

Hon'ble Rajesh Tandon, J.

By means of this writ petition, the petitioner has prayed for the issue of a writ, order or direction in the nature of certiorari quashing the order dated 07.11.2001 and 10.11.2001 passed by the respondents No. 2 and 4 respectively.

Brief facts giving rise to the present writ petition are that the petitioner was initially appointed on the post of Assistant Teacher (art) in C.T. Grade in the month of June 1990. Pursuant to the appointment order he has joined his duties in the month of July 1990.

According to the petitioner, she was transferred to Rajkeeya Ashram Padhyati Ucchater Madhymic Vidhyalay, Distt. U.S. Nagar in the year 1995.

The petitioner has stated that after the creation of State of Uttaranchal the petitioner has opted for the State of U.P.

The grievance of the petitioner is that she was transferred to an interior place in district Pithoragarh vide order-dated 07.11.2001 instead of transferring the petitioner to the State of Uttar Pradesh on

the basis of the option given by her. The petitioner has made a representation for relieving her to Uttar Pradesh cadre from Uttaranchal.

The respondents in their counter affidavit have submitted that on 18.12.1999, the petitioner was engaged in all kinds of uncivilized behavior with the then Examination In-charge of the College. The respondent No. 4 has reported to the authorities that the petitioner is creating problems for the college. The then Project Officer, Integrated Tribal Development Project, Khatima vide his inspection report dated 20.03.2001 reported that the atmosphere of the college is polluted because of the petitioner and studies of the students are also affected because of her. The Principal vide his letter dated 25.08.2001 requested the Addl. Director, Social Welfare, Uttaranchal Dehradun that in view of the petitioner's persistent misconduct and indiscipline she may be transferred elsewhere and disciplinary proceedings may be initiated against her. There were no sanctioned posts of Assistant Teacher (arts) created in the plains cadre and the petitioner was an employee of the Hill Sub Cadre of the erstwhile State of U.P.

Heard learned counsel for the parties and perused the order impugned.

The transfer order has been passed in the administrative exigency and no interference is required as already held by the Apex court in Shilpi Bose and others Vs. State of Bihar and others, AIR 1991 SC 532 that the Government servant holding a transferable posts as no vested right at one place to the other. The observations of the Apex Court are quoted below:-

> "*In our opinion, the courts should not interfere with a transfer order which are made in public interest and for administrative reasons unless the transfer orders are made in violation of any mandatory statutory rule or on the ground of mala fide. A Government servant holding a transferable post has no vested right to remain posted at one place or the other, he is liable to be transferred from the one place to the other. Transfer orders issued by the competent authority do not violate any of his legal rights. Even if a transfer order is passed in violation of executive instructions or orders, the Courts ordinarily should not interfere with the order instead affected partly should approach the higher authorities in the*

Department. If the Courts continue to interfere with day to day transfer orders issued by the Government and its subordinate authorities, there will be complete chaos in the Administration which would not be conducive to public interest. The High Court over looked these aspects in interfering with the transfer orders."

In view of the aforesaid facts and circumstances, the impugned transfer order having been passed after considering entire facts and circumstances it needs no interference under Article 226 of the Constitution of India.

So far as with regard to the transfer in the mid academic session is concerned, the Apex Court in Director of School Education Vs. O Karuppa Thevan and another reported in 1994 Supp (2) Supreme Court Cases 666 the Apex Court has held as under:-

"When the authorities made the transfer for the exigencies of administration. However, the learned counsel for the respondent, contended that in view of the fact that respondent's children are studying in school, the transfer should not have been effected during mid-academic term. Although there is no such rule, we are of the view that in effecting transfer, the fact that the children of an employee are studying should be given due weight, if the exigencies of the service are not urgent. The learned counsel appearing for the appellant was unable to point out that there was such urgency in the present case that the employee could not have been accommodated till the end of the current academic year. We, therefore, while setting aside the impugned order of the Tribunal, direct that the appellant should not effect the transfer till the end on the current academic year. The appeal is allowed accordingly with no order as to costs."

The petitioner has already sent her representation to the authorities concerned, therefore the respondents are directed to decide the same within a period of six weeks. Till the decision of the representation, the transfer order shall remain in abeyance for a period of six weeks.

With the aforesaid observations, the writ petition is dismissed. No order as to costs.

(Rajesh Tandon, J.)

NCM: